

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 8261 OF 2006

Shri Viral Gunwantraai Somani & Anr. ..Petitioners
(Org.Obstructionists)

Versus

Bank of Baroda & Ors. ..Respoondents

Mr. P.N.Joshi, Advocate, for the petitioners.

Mr. D.G.Dhanye, Advocate, i/b. M.V.Kini & Co.Advocates
for the respondent No.1.

CORAM: J.H.BHATIA, J.

DATE : 14th September, 2007.

P.C.

1. Heard learned Counsel for the parties.

2. The petitioner had filed an objection in execution of the decree under Order XXI Rule 58 of C.P.C. That objection came up for hearing before the Executing Court on 14.11.2006. It appears that the petitioner was not present when his objection petition was called for hearing and at 4.30 p.m. on 14.11.2006, his objection petition came to be dismissed under Order XXI Rule 105(2). Immediately within a few minutes, the

petitioner moved an application for restoration of his objection petition, but that application came to be rejected. Against that order, the petitioner has come to this Court under Article 227 of the Constitution of India.

3. Learned Counsel for the respondent No.1 has rightly pointed out that against such an order, passed under Order XXI Rule 106, appeal is tenable under Order 43 Rule (ja). When remedy of appeal is available, it will not be proper to entertain the writ petition.

4. For the aforesaid reasons, the petition stands dismissed. However, in view of the circumstances in which the objection petition and thereafter the application for restoration of the objection petition were rejected, it will be in the interest of justice to give some time to the petitioner to go to the appellate Court and seek appropriate remedy. The execution proceeding shall remain stayed for a period of four weeks from today so that the petitioner may prefer an appeal against the impugned order. If the appeal is filed, the period taken in prosecuting this petition and the said period of four weeks shall be excluded for the purpose of preferring appeal.

(J.H.BHATIA, J.)